

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:16-cv-03088-
)	ELR
STATE OF GEORGIA,)	
)	
Defendant.)	
)	

JOINT STATUS REPORT

NOW COME Plaintiff United States of America (“United States”) and Defendant State of Georgia (“State”), pursuant to the Court’s April 14, 2021 Order [Doc. 98], and hereby file an updated Joint Status Report outlining the parties’ progress in discovery and identifying outstanding issues impacting the timeline for completing discovery.

The United States served its First Set of Interrogatories and First Request for Production of Documents on July 24, 2020. [Docs. 74, 75.] The State served its initial responses on August 24, 2020 (Interrogatories) and August 25, 2020 (Request for Production). [Docs. 84, 85.] The State served the United States with its First Requests for Production of Documents on October 7, 2020 [Doc. 89], and the United

States provided written responses and objections to those Requests on November 9, 2020 [Doc. 90].

On December 11, 2020, the parties requested an extension of time to complete fact discovery due to the complexity of this case, which involves three State agencies and the Governor's office, as well as voluminous amounts of electronically stored information maintained in various systems and databases by numerous custodians. [See Doc. 92.] As noted above, the parties had served written discovery and conferred about document production by that time, but they anticipated needing additional time to fully gather, produce, and review responsive information [see Doc. 92]. The parties also anticipated needing additional time to schedule and conduct numerous depositions and to ascertain when it would be safe to proceed with in-person visits to school facilities in Georgia given the health risks posed by the COVID-19 pandemic. [Id.] In response to the parties' request, the Court extended the fact discovery deadline to September 13, 2021. [Doc. 93.] The Court also ordered the parties to file a joint status report no later than April 12, 2021. [Id.]

On April 12, 2021, the parties filed the required Joint Status Report. [Doc. 97.] They reported that they had conferred by email and by phone on several occasions to discuss and resolve matters related to electronic discovery, including the identification of priority custodians, the utilization of search terms, and the status and

format of document productions. The parties also reported that they had begun taking steps to produce documents in response to prior written discovery requests, resolve a host of issues that had arisen during the parties' document review, and plan for future depositions.

Since filing the April Joint Status Report, the parties have continued to confer by email and phone to address discovery matters as they arise. The parties have also continued to make progress on document production and have worked cooperatively to address a number of issues contributing to the prolonged time period required to complete discovery in this complex litigation.

Notwithstanding the progress made by the parties, some of the issues previewed in the parties' December 2020 joint motion for an enlargement of time continue to present challenges that will necessitate additional time for the completion of fact discovery.

Steps Taken by the United States

The United States continues to work diligently to respond to the State's requests for production. The State served its Second Requests for Production of Documents on May 20, 2021 [Doc. 99], and the United States served its response on June 21, 2021 [Doc. 102]. The United States' review of the collected email files of more than 30 Department of Justice personnel involved in this litigation during the

relevant time period and its manual search for potentially responsive information other than email are ongoing. In addition to the more than 9,000 pages of documents the United States produced prior to the April Joint Status Report, the United States has produced over 2,000 more pages of documents. To date, the United States has produced 1,831 documents totaling 11,463 pages. The United States expects to make smaller additional productions to the State in the coming weeks. In addition to its production of documents, on June 21, 2021 the United States served its written response [Doc. 101] to the State's First Interrogatories, which the State served on May 20, 2021 [Doc. 99].

The United States has made progress in other areas of discovery as well. The United States continues to review documents that the State has been producing on a rolling basis in response to the United States' First Request for Production of Documents. It has also worked with the State to address the State's concerns regarding burden and expense by prioritizing custodians likely to have the most responsive information and offering narrowed search terms for purposes of the State's collection of documents.

Finally, the United States has begun discussions with the State regarding the site visits that it intends to conduct during the next several months, provided that those site visits can be conducted safely and in accordance with any applicable

COVID-19 pandemic protocols. The United States anticipates that the visits will include sites that only provide Georgia Network for Educational and Therapeutic Support (“GNETS”) services as well as general education facilities that serve students with emotional and behavioral disabilities in or at risk of placement in GNETS. These site visits are a critical component of discovery, as they allow expert witnesses to evaluate, *inter alia*, the quality and availability of educational opportunities for students with emotional and behavioral disabilities, the settings in which students receive GNETS services, and the manner in which GNETS services are delivered to those students. The United States is currently in the process of collecting information regarding the locations of GNETS sites and the identity of counsel for the various regional GNETS programs so that it can finalize its site selection and travel plans in the next few weeks.

Steps Taken by the State of Georgia

The State continues to make significant headway in discovery since its April 2021 update to the Court. To date, the State has produced 60,200 documents totaling 234,359 pages in response to United States’ Request for Production of Documents. The State continues to work expeditiously to review documents for confidentiality and privilege, and makes rolling productions of documents to the United States.

As described in the previous status report, the parties agreed on a set of search terms to apply to documents sourced from agreed upon “priority” custodians from the Georgia Department of Education, the Georgia Department of Community Health, the Georgia Department of Behavioral Health and Developmental Disabilities, and the Georgia Governor’s Office of Planning and Budget. Due to the sheer number of documents requiring review, however, the parties met and conferred in an attempt to revise the agreed-upon search terms in an effort to reduce the time and expense involved in the document review. The parties were able to agree on a revised set of search terms that would narrow the corpus of documents to review from close to 600,00 documents to approximately 360,000.

To further assist in expediting the lengthy document review, the State has approved the engaging of a third-party contractor to assist the document review. The additional reviewers should significantly increase the production rate and number of documents produced in each production set.

In addition to its rolling document productions, the State continues to work with the United States on resolving any questions related to the discovery responses the State has thus far provided. It has also revised responses when requested by the United States. The State anticipates the parties will continue to amicably and expeditiously resolve any discovery issues that may arise.

To date, and in the light of the ongoing document production, no depositions have taken place. The United States has also indicated it seeks to commence visiting site locations where students receive GNETS services. The parties are currently working to set up a schedule and coordinate with the local educational agencies (“LEAs”) for the visits. As school districts decide how to address the recent uptick in COVID-19 cases, the parties will work to make sure that any visits provide as little disruption as possible.

Outstanding Issues

Moving forward, there still remains a large volume of documents in this case to be produced by the State and reviewed by the United States. The State has begun producing documents for the first 10 priority custodians, with another 14 priority custodians remaining.

The parties will also work to schedule the many depositions that will need to be taken to develop the evidentiary record, though the ability to move forward with depositions depends—in large part—on the complete production of relevant documents from each deponent’s custodial files. The parties are prepared to conduct these depositions virtually, if needed.

Finally, while the parties hope to complete site visits within the next few months, they note that the COVID-19 pandemic and the increased prevalence of the

Delta variant of the virus continue to complicate the parties' ability to predict the date when those visits will conclude.

Conclusion

The parties have cooperated to make significant, tangible progress with fact discovery over the last four months and anticipate that this progress will continue. In light of the uncertainties and challenges previously discussed, the parties expect to submit a joint request for an extension of the discovery period prior to the current September 13, 2021 fact discovery deadline. The parties assure the Court that they are working diligently and in tandem to minimize any unnecessary delays in this case.

Respectfully submitted,

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L.R. 7.1(D) CERTIFICATION

I certify that this brief has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1(C). Specifically, this brief has been prepared using 14-pt Times New Roman Font.

/s/ Alexa R Ross
Alexa R. Ross

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the foregoing document with the Clerk of Court using the CM/ECF system, which automatically sent counsel of record e-mail notification of such filing.

This 12th day of August, 2021.

/s/ Alexa R Ross
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